

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY DIVISION

DAVID LAWRENCE DIXON,

Plaintiff,

v.

CIVIL ACTION NO. 5:01-0289

PAUL KIRBY, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Plaintiff's *pro se* complaint was referred by Standing Order to the Honorable R. Clarke VanDervort, United States Magistrate Judge, who reviewed the case pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (b)(3) and submitted Proposed Findings and Recommendation (PF&R) for disposition. Plaintiff timely objected to the PF&R.

Having reviewed Plaintiff's objections *de novo*, the Court concludes they are without merit. Dixon objects the Montcalm<sup>1</sup> notice was not sent to publishers of materials denied to him by prison authorities. The case docket reports, however, the Clerk's office sent copies of the notice to each publisher listed therein. (Dixon v. Kirby, Civil Action No. 5:01-289, docket no. 6 (S.D. W. Va. Apr. 27, 2001).)

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<sup>1</sup>Montcalm Publishing Corp. v. Beck, 80 F3d 105 (4<sup>th</sup> Cir. 1996), cert. denied, 519 U.S. 928 (1996).

Dixon further objects that prison officials did not put forward a legitimate governmental interest to justify their regulation. Prison officials explained:

If prison inmates were allowed to receive retail sales catalogues on an unlimited, unrestricted basis the prisons' mailrooms would be swamped by the sheer volume of catalogues.

It is important to note that much inmate mail is read and monitored by prison authorities to ensure that contraband is not smuggled into the prison and that the mail, packages, and other inmate correspondence are not being used for other unlawful purposes. Prison mailrooms simply lack the manpower and the time necessary to process and monitor the large volume of retail catalogues that are available to consumers today.

(Defs.' Mot. for Summ. J. at 3.) Dixon argues prison officials must also provide evidence that the reason proffered is the reason why the regulation was adopted and enforced. (Pl.'s Written Objections at 6 (citing Swift v. Lewis, 901 F.2d 730, 732 (9<sup>th</sup> Cir. 1990)).) Although the Ninth Circuit has elaborated this higher standard cited by Defendant, the Supreme Court simply requires the officials to "put forward" a legitimate governmental interest to justify their regulation. Turner v. Safley, 482 U.S. 82, 89-90 (1987). That is the law in this circuit and the prison officials have complied.

Accordingly, the Court accepts and incorporates herein the Magistrate Judge's Proposed Findings and Recommendation. Plaintiff's motions for default and summary judgment are **DENIED**, Defendants' summary judgment motion is **GRANTED** and this civil

action is **DISMISSED** with prejudice.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to the named parties and counsel of record.

ENTER: July \_\_, 2002

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Charles H. Haden II, Chief Judge

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**JUDGMENT ORDER**

In accordance with the Memorandum Opinion and Order entered this day, the Court **GRANTS** judgment in favor of Defendant and **ORDERS** the case be **DISMISSED** with prejudice and **STRICKEN** from the docket.

The Clerk is directed to send a copy of this Judgment Order to the named parties and counsel of record.

ENTER: July \_\_, 2002

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Charles H. Haden II, Chief Judge